

REMARKS

Applicants have thoroughly considered the Examiner's remarks in the January 22, 2009 Office action and have addressed the rejection. The claims have not been amended. Reconsideration of the application in view of the following remarks is respectfully requested.

Applicants request that the Examiner now have the drawings as originally filed reviewed and accepted.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 4-7, 9-26, 28-31, 33-36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cadiz et al. (Pub. No. US 2002/0186257 A1) in view of Jobs et al. (Pub. No. US 2005/0149879 A1). Applicants respectfully submit that Cadiz is not prior art.

The publication of Cadiz, related US Patent 7,185,290 to Cadiz, and the Applicant's instant application are commonly owned by Microsoft Corporation, Redmond WA.

US 2002/0186257 was laid open on December 12, 2002, and US 7,185,290 was laid open on September 4, 2003. The Applicant's instant application, assigned to Microsoft Corporation, was filed on August 21, 2003, less than one year after the publication of the Cadiz references.

In terms of establishing prior art, Applicants submit that the Cadiz references do not qualify as prior art under the various subsections of 35 U.S.C. § 102 except possibly § 102(e), which states in part:

"the invention was described in - (1) **an application for patent**, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) **a patent granted** on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language" (Emphasis added)

Applicants submit that the Cadiz references are not Section 103 prior art as stated in 35 U.S.C. § 103(c)(1):

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, **shall not preclude patentability** under this section where **the subject matter and the claimed invention were**, at the time the claimed invention was made, owned by the same person or **subject to an obligation of assignment to the same person.**" (Emphasis added)

Hence, the Cadiz references are not prior art under 103(c)(1) because the Cadiz references and Applicant's instant application are commonly owned. Since the rejection based on Cadiz is improper and since the other cited reference, Jobs, does not anticipate each and every aspect of these claims, Applicants request that the 35 U.S.C. § 103 rejection of claims 1, 4-7, 9-26, 28-31, 33-36 be withdrawn.

Applicants hereby submit the following enclosures to support these remarks:

1. Recorded Assignment dated 4/9/2002 for US 2002/0186257. Reel/Frame: 012566/0246.
2. Recorded Assignment dated 6/14/2001 for US 7185290. Reel/Frame: 011661/0856.
3. Recorded Assignment dated 12/23/2003 for Applicant's Publication US 2005/0044058. Reel/Frame: 014846/0836.

CONCLUSION

Applicants submit that the claims are allowable for at least the reasons set forth herein. Applicants thus respectfully submit that claims 1, 4-5, 7, 9, 11-25, 28-31 and 34-36 as previously filed are in condition for allowance and respectfully request favorable reconsideration of this application.

Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited claims. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

Applicants wish to expedite prosecution of this application. If the Examiner deems the application to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the application in condition for allowance.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,

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